

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 ADVOCATES FOR RESPONSIBLE  
4 DEVELOPMENT, JOHN E. DIEHL, individually  
5 and as a member of ADVOCATES FOR  
6 RESPONSIBLE DEVELOPMENT,

7 Petitioners,

8  
9 v.

10 MASON COUNTY,

11  
12 Respondent.

CASE NO. 05-2-0003

ORDER DISMISSING PETITION  
FOR REVIEW

13  
14 This petition for review challenging some features of Mason County's resource ordinance and  
15 comprehensive land use plan was filed with the Board by facsimile and stamped received on  
16 January 25, 2005. According to the Petition for Review, notice of the adoption of Mason County  
17 Ordinance 106-04, amending the county's resource ordinance, was published by Mason County on  
18 November 25, 2004.

19  
20 The Board issued a Notice of Hearing and Preliminary Schedule for this case on February 4,  
21 2005. It was signed by Presiding Officer, Gayle Rothrock. Upon receipt of the Notice of Hearing,  
22 Petitioner Diehl contacted the Board to correct the date of filing. He advised the Board that filing on  
23 January 25, 2005 would be beyond the statutory deadline and that he had sent his petition for review  
24 to the Board by facsimile on January 24, 2005.

25  
26 The Board's records reflect that the petition was filed on January 25, 2005. See attached  
27 Declaration of Patricia Davis, Executive Assistant to the Board. Rules, governing procedures for all  
28 Growth Management Hearings Boards, set forth in the Washington Administrative Code, require that  
29 a petition for review filed by facsimile must be *received* by the Board by 5:00 p.m. or the date of  
30 service will be the following day:  
31  
32

1 Filing of any documents with a board by electronic telefacsimile transmission is at the risk of  
2 the sender and shall not be deemed complete unless the following procedures are strictly  
3 observed:

4 (a) A facsimile document will only be stamped "received" by the board between the hours of  
5 8:00 am and 5:00 pm excluding Saturdays, Sundays and legal holidays. Any transmission  
6 not completed before 5:00 pm will be stamped received on the following business day.  
7 The date and time indicated by the board's facsimile machine shall be presumptive  
8 evidence of the date and time of receipt of transmission.

9 WAC 242-02-240(2)(a)

10 The statute provides that: "All petitions....must be filed within sixty days after publication by  
11 the legislative bodies of the county or city." RCW 36.70A.290(2). In this case, the petition for  
12 review was filed sixty-one days after the date of publication.

13 The Presiding Officer sent a letter to petitioner Diehl, dated February 11, 2005, notifying him  
14 the Board could not continue processing the case since it was not timely filed. WAC 242-02-220,  
15 240, and 522 and RCW 36.70A.290(3). The Declaration of Patricia Davis, Executive Assistant to the  
16 Western Washington Growth Management Hearings Board, was attached. A copy of the letter and  
17 attachment was sent to the Mason County Prosecuting Attorney. No evidence has been provided to  
18 the Board to indicate that the petition for review in this case was in fact timely filed.  
19

20 ORDER

21 Since the petition for review was not timely filed, this matter is hereby DISMISSED.  
22

23 Done this 22<sup>nd</sup> Day of February 2005.  
24

25 \_\_\_\_\_  
26 Gayle Rothrock, Board Member  
27

28 \_\_\_\_\_  
29 Holly Gadbaw, Board Member  
30

31 \_\_\_\_\_  
32 Margery Hite, Board Member

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

ORDER DISMISSING PETITION FOR REVIEW  
Case No. 05-2-0003  
February 22, 2005  
Page 3 of 3

Western Washington  
Growth Management Hearings Board  
905 24th Way SW, Suite B-2  
Olympia, WA 98502  
P.O. Box 40953  
Olympia, Washington 98504-0953  
Phone: 360-664-8966  
Fax: 360-664-8975